IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 334 of 2007

IN

WRIT PETITION No. 3111 of 2004

Rajendra H. Pande .. Appellant

versus

Sarvodaya Hospital .. Respondents

...

Mr.S.N. Deshpande for the appellant.

Mr.H.H. Madon, Mr.Naushad Engineer, Mr.Rajesh Rathod i/b M/s.Bilawala & Co. for the respondent.

CORAM : R.M.S. KHANDEPARKAR

AND D.G.KARNIK, JJ

DATED : 11th June 2007.

P.C.:

1. Heard.

2. The appellant challenges the order dated 21st March 2007 passed in Writ Petition 3111 of 2004

whereby the learned Single Judge has rejected the Writ Petition challenging the order dismissing complaint ULP No.578 of 1993 by the Industrial Court. The perusal of the impugned order as well as the order of the Industrial Court disclose that the appellant had not produced any evidence regarding his employment with the respondent after 1988 onwards. Besides it is the case of the appellant himself that initially he was employed as a ward boy and since 1988 he was employed for the job of watchmanship. The appellant has not explained under what circumstances he came to collect the gratuity amount on 30th January 1988 along with Provident Fund. The collection of this amount clearly discloses that the relationship of employer-employee had come to an end between the appellant and the respondent. Thereafter, there is absolutely no evidence to disclose that the relationship of employer-employee had continued in any other manner or had established afresh between the appellant and respondent. The documents which were produced by the appellant were in relation to the medical treatment either to himself or to his relatives in the respondent’s hospital. Merely merely because the appellant and his relatives were able to get free treatment in the

hospital, that itself cannot be sufficient to establish the relationship of employer-employee between the parties and more particularly in the circumstances which disclose that in January 1988, the appellant had collected gratuity amount and Provident Fund. The learned Single Judge after going through the records has arrived at a finding that no fault can be found with the finding arrived at by the Industrial Court.

3. We do not find any perversity in the said finding. The contention was sought to be raised that though the issue regarding the existence of relationship of employer-employee was sought to be raised, no issue in that regard was ever framed by the Industrial Court. The materials on record disclose that the parties were fully aware of the rival contentions in the matter and they went to trial knowing well the case which they were required to establish and therefore the appellant was not put to surprise in any manner on account of the absence of specific issue being not formulated by the Industrial Court in that regard. Parties knowing well the case of each other had led the evidence on the said issue and the same having been approrpiately

considered, we do not find any illegality committed by the Industrial Court or by the learned Single Judge in rejecting the said contention. Besides the appellant had not raised the point regarding non formulation of the said issue before the learned Single Judge. On that ground also, it is too late for the appellant to seek interference in the impugned order.

4. In the facts and circumstances of the case, there is no case for interference and hence appeal fails.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)